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NIXON & VANDERHYE, PC
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ARLINGTON VA 22203

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OFFICE OF PETITIONS

In re Application of :
Hugh Alexander Spikes : DECISION ON PETITION TO
Application Number: 10/509083 : WITHDRAW HOLDING OF
Filing Date: 09/30/2004 : ABANDONMENT
Attorney Docket Number: 550-594 :

This is a decision on the petition filed on 10 August, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely and properly respond to the non-final Office action mailed on 28 August, 2006. On 6 August, 2007, Notice of Abandonment was mailed.

Petitioner asserts that a timely reply was filed in response to the non-final Office action mailed on 15 December, 2006, and that petitioner timely filed a reply on 25 April, 2007, to the Office communication mailed on 26 March, 2007.

A review of the record reveals the following:

1. On 30 September, 2004, the application was filed.
2. On 28 August, 2006, a non-final Office action was mailed, setting a three (3) month shortened statutory period for reply.
3. On 15 December, 2006, an amendment in response to the Office action was mailed, accompanied by, *inter alia*, a petition for a one (1) month extension of time, and the required fee, in accordance with 37 CFR 1.136(a).

4. On 26 March, 2007, an Office communication was mailed. The Office communication stated that the reply filed on 15 December, 2006, was not fully responsive to the prior Office action.

The Office communication also stated, in pertinent part:

Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

5. On 25 April, 2007, an amendment was filed.

6. On 6 August, 2007, a Notice of Abandonment was mailed, stating the application was abandoned for failure to timely respond to the Office action mailed on 28 August, 2006.

7. On 10 August, 2007, the present petition was filed.

Petitioner asserts, essentially, that a new time period should have been given for submission of a response to the notice that the amendment was non-compliant. Thus, the application should not have been held abandoned for failure to timely reply to the Office action mailed on 28 August, 2006.

Upon review, petitioner's arguments are well taken:

At the outset, the Office communication mailed on 26 March, 2007, states, on the cover sheet, that the shortened statutory period of response is 30 days. As such, the showing is that applicant was given a 30 day shortened statutory period for reply.

Furthermore, MPEP 701 states, in pertinent part:

F. Non-Compliant Amendments

If an amendment submitted on or after July 30, 2003, fails to comply with 37 CFR 1.121 (as revised on June 30, 2003), the Office will notify applicant by a Notice of Non-Compliant Amendment, Form PTOL-324, that the amendment fails to comply with the requirements of 37 CFR 1.121 and identify: (1) which section of the amendment is non-compliant (e.g., the amendments to the claims section); (2) items that are required for compliance (e.g., a claim listing in compliance with 37 CFR 1.121(c)); and (3) the reasons why the section of the amendment fails to comply with 37 CFR 1.121 (e.g.,

the status identifiers are missing). The type of amendment will determine whether applicant will be given a period of time in which to comply with the rule and whether applicant's reply to a notice should consist of the corrected section of the amendment (e.g., a complete claim listing in compliance of 37 CFR 1.121(c)) instead of the entire corrected amendment. If the noncompliant amendment is:

...

(C) A non-final amendment including an amendment filed as a submission for an RCE, the TSS will send the notice which sets a time period of 30 days or one month, whichever is later, for reply. Extensions of time are available under 37 CFR 1.136(a). Failure to reply to this notice will result in abandonment of the application. Applicant's reply is required to include the corrected section of the amendment.

As such, the application should not have been held abandoned for failure to timely respond to the Office action mailed on 28 August, 2006. Additionally, applicant timely filed a reply to the Office communication mailed on 26 March, 2007, by filing the amendment filed on 25 April, 2007.

The showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

The application will be forwarded to the Technology Center for consideration of the amendment filed on 25 April, 2007.

The application is being referred to Technology Center Art Unit 3682 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions